Tax Control Framework and Cooperative Compliance

Effective and efficient tax risk management
The growing importance of Tax Governance

Integrate tax planning into the strategic decision process

Good tax governance is not merely a technical matter, but an increasingly important element of a wider business strategy. National and international legislators are significantly extending transparency requirements for corporates (e.g. the OECD BEPS project, annual country-by-country reporting, etc.), therefore tax functions are challenged to effectively and efficiently manage tax-related risks by reinforcing the control system. In this scenario, companies should consider the following focal points:

Keep up with rapidly changing transparency requirements: Tax administrations (but also other supervisory authorities such as central banks) are increasingly interested in how companies govern tax, from their tax strategy, to the quality of their tax function and to their ability to be compliant;

Meet investors’ expectations: Companies need to respond in a clear and thoughtful way to a much wider base of stakeholders than ever before. Large investors, such as state funds, are increasingly demanding that companies disclose and explain their tax policies and tax footprints.

Regain control on your reputation and take advantage from transparency: Appropriate and transparent tax behavior has become a key component of corporate responsibility.
Co-operative compliance and Tax Control Framework

Transparency in exchange of certainty

Study into the Role of Tax Intermediaries
OECD

Co-operative Compliance: A Framework
From Enhanced Relationship to Co-operative Compliance
OECD

Co-operative Tax Compliance
Building Better Tax Control Frameworks
OECD

International Compliance Assurance Programme
Pilot Handbook
OECD

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Effects

Disclosure: «make the revenue body aware of any tax positions taken in the return that may be uncertain or controversial»

Transparency: «TCF that enables the taxpayer to be fully aware and in control of all the positions and issues that need to be disclosed»

Certainty (Taxpayer): «transparency in exchange for certainty»

Risk management (Tax Authority): «the extent of reviews and audits of the returns submitted can be reduced significantly»

key pillars

Revenue bodies
- understanding based on commercial awareness;
- impartiality;
- proportionality;
- openness through disclosure and transparency;
- responsiveness.

Taxpayers
- disclosure;
- transparency;
- tax control framework.

“co-operative compliance programmes require changes in culture and behaviour both for revenue bodies and for business
The six building blocks of a Tax control framework

The OECD has proposed a comprehensive tool, called Tax control framework (TCF), to detect, measure, manage and control tax risk. The TCF should improve the opportunity to disclose promptly to the Tax Authority and consequently reduce the risk of tax audits. The OECD guidelines in order to set up a robust Tax Control Framework, are based on the following six building blocks:

**Tax Strategy Established:** The document should provide clear goals, KPIs and a tax policy and should be in line with the organization’s overall strategy, fostering a shared knowledge of the company’s tax footprint and tax risks.

**Governance Documented:** A tax risk management process should be in place (as part of a broader risk management system).

**Applied Comprehensively:** The Tax Control Framework needs to govern the full range of an enterprise’s activities and should be embedded in the day-to-day management of business.

**Testing Performed:** The testing, monitoring and maintenance of processes and controls should take place on a regular basis to ensure the effectiveness of the framework and to detect and correct possible errors.

**Responsibility Assigned:** Roles and responsibilities for the implementation of the Tax Control Framework should be clearly recognised and properly resourced across all company levels.

**Assurance Provided:** The Tax Control Framework should be reliable and should provide assurance to stakeholders.

Governance and tax controls

Key initiatives from institutions such as OECD, EU, national regulators and NGOs

Approach to tax is based on
- Organisational values;
- Stakeholder engagement;
- Business vision and mission;
- Tax vision and mission.

Key Risk

**Tax Transparency Initiatives**

**Tax governance**

**Hard law**

Reputation

Compliance

Governance and Tax Control

The takeaway: a Tax Control Framework that fits your organisation and enables being in control over tax

To fit your specific needs, PwC can provide you with support on each of the different building blocks of the TCF. PwC recommends starting with a review of the current state of the Tax Control Framework, if it already exists. Taking into account the characteristics of your organization, its key risks and your strategic goals, a desired state for the Tax Control Framework can be determined. PwC’s experts can draft a detailed action plan that is tailor-made to your organization, and then help you with its implementation and maintenance.
Co-operative compliance and the TCF in Italy

Scope of the regime. Law Decree no. 128/2015 introduced in Italy the Co-operative Compliance program. Large businesses now have a valuable instrument for an enhanced cooperation with the Tax Administration and for the prevention of tax controversies.

Tax Risk: spilled milk vs preventive management

The preventive management of the tax issues through the synergic adoption of Tax Control Framework and Co-operative Compliance reduces the exposure of the Company to Tax Risk.

The **Tax Control Framework** is a group of rules, procedures, organizational structures and checks, aimed at allowing the detection, measurement, management and control over tax risk, as the risk to incur in a violation of tax rules or to act against the principles and purposes of the law (abuse of law).

The **Co-operative Compliance** allows taxpayers to activate, with reference to uncertain and controversial tax positions, a preventive dialogue with tax authorities, aimed at reaching a shared evaluation of the facts and circumstances relevant to the business and that are the source of the tax uncertainty, anticipating and finalising the in depth controls of the tax authorities.

Tax Risk: spilled milk vs preventive management

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**Risk mitigation**

- Exclusion of further tax audits
- Preventive certainty
- Right to disagree
Who can apply?

a. resident and non-resident entities (with a permanent establishment in Italy) with a total turnover or operating revenues exceeding 10 billion Euro. (1 billion Euro for the entities that applied for the pilot project launched in 2013);

b. resident and non-resident entities (with a permanent establishment in Italy) that perform strategic direction functions in relation to the TCF of an entity that falls sub a), regardless of the amount of their revenues;

c. entities giving execution to the IRA’s opinion in reply to the advance ruling on new investments (see below), regardless of the amount of total turnover or revenues;

d. non-resident companies belonging to multinational groups with consolidated revenue higher than 1 billion Euro and carrying out supplies of goods and services in Italy for more than 50 million Euro, without a self-declared permanent establishment, can have their “no-longer-hidden” permanent establishment admitted to the Co-operative Compliance regime.

After 2019, we expect that access to the regime will be gradually extended to all large taxpayers (total turnover over 100 million Euro).

The implementation of an effective TCF is a mandatory entry requirement.

Procedural aspects

Application: The Taxpayer has to file to the Tax Authority an application including the documents required by the Law:

• description of the business;
• company’s tax strategy;
• description of the tax control framework adopted and of its implementation;
• map of the business processes;
• map of the company’s tax risks and associated control systems.

Post-Filing: Test of the design of the TCF by the Italian Tax Authority (additional information could be required such as Transfer Pricing documents);

Admission: disclosure of any significant tax risk, suggesting the tax treatment that it deems applicable, with the right to disagree with the fiscal treatment proposed by the IRA. If the taxpayer does not disclose a very significant risk, it might be expelled from the regime.

Benefits of the regime

• Advance discussions with the IRA before the filing of tax returns, in order to prevent tax audits;
• Fast-track ruling about the application of tax provisions to specific cases, involving any tax risks;
• 50% reduction of tax penalties. Penalties, in any case, will not exceed the minimum provided by law;
• In case of an assessment, the suspension of the tax collection until the assessment procedure has ended;
• In case of a criminal investigation, the IRA can inform the Public Prosecutor about the existence of a TCF, with the related managing and administrative roles and responsibilities.

The takeaway: certainty in exchange of transparency

PwC is here to help you include taxes into your business control and governance risk framework. The PwC experts can provide you with assistance in the design and implementation of an efficient tax control framework, including a tax compliance management system, to access the co-operative compliance regime. PwC can assist you in navigating these issues, so that you can adapt your company’s approach to tax management to master the challenges in today’s developing environment.
International Compliance Assurance Program (‘‘ICAP 2.0’’)

The International Compliance Assurance Program is an experimental and multilateral tax risk assessment program that aims to foster a transparent, preventive and voluntary cooperation between big multinational groups and the tax authorities of the jurisdictions involved, to provide assurance of key international tax risks, mainly related to transfer pricing and permanent establishments.

Launched in 2018, it now includes 17 jurisdictions (Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Spain, UK, and USA), with other countries considering joining it.

Benefits of the Program

• Targeted use of information: companies can illustrate the relevant information (e.g. country-by-country reports) to tax authorities, aiding them to understand their cross-border activities;
• Efficient use of resources: companies can engage with different tax authorities at the same time, on a wide scope of risks, preparing a single documentation package;
• Fast and clear communication: ICAP is a process based on clear and binding timeframes (typically, 24-28 weeks), agreed upon by the taxpayer and the tax authority, to assess the level of tax risk.
• Better relationships with tax authorities: participation in the Program can enhance the transparency, good faith and mutual trust in the relationship of the company with tax authorities;
• Fewer disputes: the Program improves the tax authorities’ understanding of transactions, through their discussion at an early stage. This can reduce the number of cases that result in disputes;
• Assurance. Even though the Program does not grant legal certainty, nevertheless it provides the participating company with comfort that multiple tax administrations do not anticipate reviewing the covered risk areas.

The four stages of the Program

• Pre-entry: in this phase, multinational enterprises can start talks to decide whether the tax authorities would consider favorably their participation in the Program.
• Scoping of the transactions that will be included in the risk assessment, mapping the business areas that are potentially more subject to the risk of tax violations.
• Risk assessment and issue resolution. The core of ICAP, this stage includes the submission of the main documentation package as well as multilateral meetings between the company and the relevant tax administrations. This phase leads to the conclusion that the covered transactions pose a low risk, and to the resolution of any issues that should arise on the tax treatment of the transactions in scope.
• Outcomes. The tax administrations issue a completion letter that confirms the conclusion of the ICAP risk assessment and its results.

The periods that can be covered by the risk assessment are the fiscal years beginning on or after 1 January 2016. The assessment can also be forward-looking, for the two fiscal years following the covered periods.

The takeaway

ICAP provides large international business with an easier way to tax compliance. Taking into account the characteristics of your organization, the PwC experts can assist you in drafting and submitting your application to ICAP, and can support you through each stage of the Program, thus allowing you a more advantageous and transparent approach to tax.